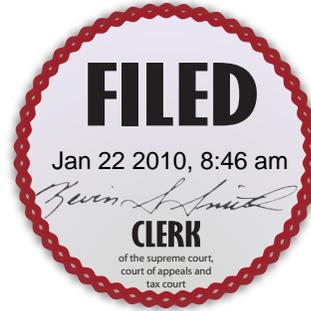


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP OF)
A.M.G. (Minor Child) and A.G. (Father),)

A.G. (Father),)

Appellant-Respondent,)

vs.)

ALLEN COUNTY DIVISION, INDIANA)
DEPARTMENT OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 02A03-0910-JV-484

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D07-0811-JT-204

January 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent A.G. (“Father”) appeals an order terminating his parental rights, upon the petition of the Appellee-Petitioner Allen County Department of Child Services (“the DCS”). We affirm.

Issue

Father alleges that the DCS failed to establish, by clear and convincing evidence, the requisite statutory elements to support the termination of his parental rights.

Facts and Procedural History

In 2006, Father was living with M.W. (“Mother”), their infant child, A.M.G., and Mother’s four-year-old son, T.W. Father was arrested for domestic battery in March of 2006. The DCS became involved with the family after receiving four separate reports of domestic violence and discord.

On July 13, 2006, DCS case manager Daniel Whiteley and a Fort Wayne police officer toured the family’s trailer home and discovered the following conditions. The front door was off its hinges and could not be secured; its framing was rotten and nails were exposed. In T.W.’s room, there were exposed electrical outlets and an exposed fuse box. The hallway floor had a hole in it. Cigarette butts littered the living room floor; the bedrooms were filthy. Mattresses without sheets were laid on top of bare wood flooring. The gas had been shut off

and the parents were using an electric skillet and a grill to cook. Fort Wayne Neighborhood Code compliance officers were called, and declared the trailer home condemned.

The children were removed from the residence and subsequently found to be Children in Need of Services (“CHINS”). Both parents entered into a service referral agreement. With regard to Father, primary goals involved obtaining appropriate employment and housing and receiving anger management and substance abuse services.

Despite the provision of services, Father was unable to remain drug free and obtain suitable housing. On November 20, 2008, the DCS petitioned to terminate Mother’s and Father’s parental rights to A.M.G. Mother agreed to the termination of her parental rights. On August 11, 2009, after a hearing at which Father appeared, the trial court entered an order terminating Mother’s and Father’s parental rights. Father now appeals.¹

Discussion and Decision

A. Standard of Review

This court will not set aside the trial court’s judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

¹ Mother is not an active party to this appeal.

B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) One (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

C. Analysis

Father does not challenge the trial court's determinations pursuant to Indiana Code Section 31-35-2-4(b)(2)(A) (removal from the parents) or (D) (satisfactory plan). However, he challenges the trial court's determinations relating to Indiana Code Section 31-35-2-4(b)(2)(B) (conditions will not be remedied or relationship poses a threat to child's well-being) and (C) (best interests of the child).

It is well-settled that a parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Among the circumstances that a trial court may properly consider are a parent's criminal history, drug and alcohol abuse, historical failure to provide support, and lack of adequate housing and employment. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The DCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." In re Kay.

L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

With regard to Father, the trial court found that he had failed to adequately participate in and benefit from services to address his substance abuse and anger issues. Evidence was presented that Father had twenty-one positive drug screens during the period of time from March 25, 2009 to April 29, 2009. He had completed an initial assessment, but had not completed substance abuse treatment. Despite anger management classes, Father had encountered a neighbor allegedly stealing food and had choked him into unconsciousness. He had yelled at and cursed a caseworker, insisting that drug screen results were inaccurate. Additionally, Father's demeanor during visitation caused some concern when the visitation supervisor perceived that Father was impatient and easily angered.

Father had historically had difficulty with maintaining full-time employment. Shortly before the termination hearing, he had secured a full-time position at Dunkin Donuts; however, he testified that the minimum wage job did not alleviate his financial stress. Since his trailer home was condemned in 2006, Father had lived in approximately eight residences. In 2008, Father and Mother were living in a residence with their subsequently born child, A.G., Jr. That residence was condemned due to lack of plumbing and heat and the discovery of a foot of sewage in the basement, and A.G., Jr. was removed.²

As of the termination hearing, Father had been permitted to live with an aunt until he could "get on his feet." (Tr. 62.) However, the DCS considered the aunt's home unsuitable for A.M.G. because the DCS had substantiated a neglect allegation against the aunt and had

² At that time, Father and Mother permanently separated.

also substantiated an allegation that the aunt's son had perpetrated an offense against another child. Therefore, the DCS had not assessed the residence for spatial or structural suitability.

Finally, A.M.G.'s guardian ad litem and caseworker testified that termination of parental rights was in the best interests of A.M.G. The evidence establishes that, three years after A.M.G.'s removal, Father had been unable to complete the services that DCS offered or to provide a stable lifestyle for A.M.G.

The DCS presented clear and convincing evidence that the conditions leading to A.M.G.'s removal would not, in reasonable probability, be remedied and that termination of Father's parental rights was in the best interests of A.M.G.

Conclusion

The DCS established by clear and convincing evidence the requisite elements to support the termination of Father's parental rights.

Affirmed.

BAKER, C.J., and ROBB, J., concur.